

REMARKS

Applicant thanks the Examiner for total consideration given the present application. Claims 1-14 were pending prior to the Office Action. Claims 15-18 have been added through this Reply. Thus, claims 1-18 currently pending of which claims 1 and 8 are independent. Claims 1 and 8 have been amended through this Reply in order to further clarify the claimed invention. Applicant respectfully requests reconsideration of the rejected claims in light of the amendment and remarks presented herein, and earnestly seeks timely allowance of all pending claims.

35 U.S.C. § 102 REJECTION – Matsunaga

Claims 1-3, 5-10, and 12-14 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Matsunaga (U.S. 2004/0066746 A1)[hereinafter "Matsunaga"]. Applicant respectfully traverses this rejection.

For a Section 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See M.P.E.P. 2131; M.P.E.P. 706.02*. Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Matsunaga fails to teach or suggest each and every claimed element. For example, amended independent claim 1 recites, *inter alia*, “wherein the statistical information storage field includes an already-processed indicating flag region which indicates whether the router apparatus has discarded the burstly transmitted received IP packets associated with the target session.” *Emphasis added.* Independent claim 8 is directed to a method claim corresponding to the apparatus of claim 1.

The Examiner relies on Fig. 5 and paragraphs [0109], [0114], and [0123] as disclosing the above-identified claim feature. It is respectfully submitted that the Examiner’s interpretation of the relied upon sections of Matsunaga is totally erroneous.

As previously submitted, Matsunaga merely discloses a packet transfer rate monitoring control apparatus and method in packet communication network in which the minimum

guaranteed rate and maximum limiting rate of packet transfer rate are contracted for each service which a subscriber uses. Although Matsunaga teaches queuing of packets for each flow and packet discarding and shaping in accordance with a transport layer protocol, nowhere does Matsunaga teach or suggest the above-identified claim feature of independent claim 1.

It appears that the Examiner is relying on the “tagging” operation as disclosed in paragraphs [0112] and [0123] as disclosing the claimed statistical information storage field which includes an already-processed indicating flag region which indicates whether the router apparatus has discarded the burstly transmitted received IP packets associated with the target session.” It is respectfully submitted that the claimed invention is distinguished from Matsunaga at least for the reason that in Matsunaga, “tagging” is performed simply to identify which packets belong to a flow exceeding the maximum limiting rate. Nowhere does Matsunaga teach or suggest a statistical information storage field which includes an already-processed indicating flag region which indicates whether these identified packets (which belong to a flow exceeding the maximum limiting rate) have been discarded. (Emphasis added.)

Indeed, in paragraph [0131], Matsunaga teaches that when a receiving node receives a packet whose header information has a Congestion Experiend (CE) bit added to it, an ECN-echo flag is set in header information of an acknowledgement (ACK) packet to be returned to a transmitting node. Then, this packet is transmitted to the transmitting node which may lower the transmission rate for the packet containing this ECN-echo flag so that the packet transfer apparatus can restrict the packet transfer rate to the maximum limiting rate without packet discarding or shaping. (Emphasis added.) Thus, this ECN-echo flag does not indicate whether the packet transfer apparatus has discarded a burstly transmitted received IP packets associated with the target session.

Therefore, for at least these reasons, independent claim 1 is distinguishable from Matsunaga. Claim 8 is a method claim corresponding to the apparatus of claim 1. Thus, for at least the reasons stated with respect to claim 1, claim 8 is also distinguishable from Matsunaga. Claims 2-3, 5-7, 9, 10, and 12-14 are distinguishable from Matsunaga at least by virtue of their dependency on corresponding independent claim.

Accordingly, Applicant respectfully requests that the rejection of claims 1-3, 5-10, and 12-14, based on Matsunaga, be withdrawn.

35 U.S.C. § 103 REJECTION – Matsunaga, Lo

Claims 4 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Matsunaga in view of Lo et al. (U.S. 2003/0095567 A1)[hereinafter "Lo"]. Applicant respectfully traverses. Claim 4 depends from claim 1 and claim 11 depends from claim 8. As demonstrated above, Matsunaga fails to teach or suggest "wherein the statistical information storage field includes a *already-processed indicating flag region* which *indicates whether the router apparatus has discarded the burstly transmitted received IP packets associated with the target session*" as recited in claim 1 (or method claim 8). Lo has not been, and indeed cannot be, relied upon to fulfill at least this deficiency of Matsunaga. Therefore, it is respectfully requested to withdraw the rejection of claims 4 and 11 based on Matsunaga and Lo.

New Claim

New claims 15-18 are allowable at least by virtue of their dependency on corresponding independent claim and further in view of novel features recited therein. For example, none of the cited prior art references, either alone or in combination, teaches or suggests, *inter alia*, "wherein the statistical information storage field includes a real-time average transfer rate storage region storing a data transfer rate per unit time calculated by the transfer rate measurement unit and a total average transfer rate storage region storing a total average data transfer rate that is an average of data transfer rates that have been measured since the start of the target session" as recited in claims 15 and 17.

Conclusion


In view of the above remarks, it is believed that all pending claims are allowable.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ali M. Imam Reg. No. 58,755 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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